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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,082	07/25/2001	Mark R. Potter	1662-38800 JMH (P00-3561)	6486
22879	7590	04/10/2006	EXAMINER DU, THUAN N	
HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400			ART UNIT 2116	PAPER NUMBER

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/915,082	POTTER ET AL.	
	Examiner	Art Unit	
	Thuan N. Du	2116	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,8,9,11-13,21,23-30,33 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,8,9,11-13,21,23-30,33 and 35-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. It is hereby acknowledged that the following papers have been received and placed of record in the file: Amendment (dated 2/2/06).
2. Claims 4-7, 10, 14-20, 22, 31, 32 and 34 have been cancelled. Claims 1-3, 8, 9, 11-13, 21, 23-30, 33 and 35-42 are presented for examination.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-3 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Regarding claim 1, it is not clear that the identified computer, as recited in lines 9-10, in the first group of computers or the second group of computers.
7. Claims 2, 3 and 8 are also rejected for incorporating the above deficiency by dependency.

Claim Rejections - 35 USC § 103

8. Claims 1-3, 8, 9, 11-13, 21, 23-30, 33 and 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fung (U.S. Patent No. 6,859,882).

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9. Regarding claims 1, 9, 21, 23, 24, 26-29 and 35-42, Fung teaches a system, comprising:

a plurality of groups computers (server nodes) [col. 6, lines 14-17, 47-51; col. 7, lines 9-11], each computer capable of being in one of a plurality of power states (Modes 1-4) [col. 34, line 53 to col. 35, line 47], said groups of computers comprising at least a first group of computers [the server nodes in normal power state] and a second group of computers [the server nodes in power saved state] wherein the first group of computers performs a different function than the second group of computers [the server nodes in normal power state perform different function than the server nodes in power saved state]; and

a load balancer (128) and power management logic (MM 108) coupled to said groups of computers and to a network external to said computer system [Fig. 6; Internet 132 is external to the system], wherein said load balancer and power management logic identifies a computer that is operating less efficiently than another computer in said first group of computers [col. 8, lines 25-32; col. 12, lines 13-24] and deploys the identified computer for use in the second group of computers instead of said first group of computer (placing the identified computer in a power saved mode) [col. 8, lines 24-38; col. 11, lines 66-67; col. 12, lines 13-24].

Fung does not explicitly teach that the deploying the identified computer for use in the second group of computers (placing the identified computer in a power saved mode) based on transactions on the network. However, Fung discloses that the power of the server could be adjusted based on the network traffic [col. 33, lines 57-59]. Fung also discloses that the network is monitored to determine the amount of network traffic [col. 74, lines 9-15] and change the power state of the computer when a rate of transactions falls bellow a threshold [col. 31, lines 21-40]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of

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the invention to recognize that Fung could also place the identified computer in a power saved mode based on transaction on the network.

10. Regarding claim 2, Fung teaches that the network comprises the Internet [Figs. 1 and 6].

11. Regarding claims 3 and 11-13, Fung teaches that the management module determines when an amount of transactions on said network drops below a threshold and when this occurs, places the identified computer in a power saved mode [col. 31, lines 21-40].

12. Regarding claim 8, Fung teaches that the load balancer and power management logic identifies the computer that is operating less efficiently by considering how fast each of said computers responds to transactions [col. 8, lines 15-30].

13. Regarding claims 21 and 26, in addition to the above rejection, Fung discloses that the system allows a user to specify an upper limit for power usage and specify a performance criterion [col. 45, lines 43-51].

14. Regarding claim 25, Fung teaches that the power state includes a state selected from the group consisting of fully operational (Mode 1), reduced power (Modes 2 and 3), and off (Mode 4) [col. 35, lines 63-65].

15. Regarding claim 35, in addition to the above rejection, Fung discloses that the power consumption of the system could be varied based on time sequences [col. 34, lines 11-22].

16. Regarding claims 30 and 33, since they recite method of operating of the apparatus defined in the apparatus claims, they are rejected accordingly based on the rejection of the apparatus claims.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuan N. Du whose telephone number is (571) 272-3673. The examiner can normally be reached on Monday-Friday: 9:30 am - 6:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (571) 272-3670.

Central TC telephone number is (571) 272-2100.

The fax number for the organization is (571) 273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

TD
April 5, 2006



**THUAN N. DU
PRIMARY EXAMINER**